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**AGREEMENT BETWEEN THE CITY OF SAN JOSE AND NEW CITY AMERICA, INC. FOR A FEASIBILITY STUDY AND FORMATION OF A SPECIAL DISTRICT IN THE WILLOW GLEN AREA**

THIS AGREEMENT is made and entered into this 18<sup>th</sup> day of December 2007, by and between the CITY OF SAN JOSE, a municipal corporation (hereinafter "CITY"), and NEW CITY AMERICA, INC., a California corporation (hereinafter "CONSULTANT").

**RECITALS**

The purpose for which this AGREEMENT is made, and all pertinent recitals, are listed on EXHIBIT A, entitled "RECITALS", which is attached hereto and incorporated herein.

**THE PARTIES HEREBY AGREE AS FOLLOWS:**

**SECTION 1. SCOPE OF SERVICES.**

CONSULTANT shall perform those services specified in detail in EXHIBIT B, entitled "SCOPE OF SERVICES", which is attached hereto and incorporated herein.

**SECTION 2. TERM OF AGREEMENT.**

The term of this AGREEMENT shall be retroactive from July 1, 2007, and shall continue through February 28, 2009, inclusive, subject to the provisions of SECTION 11 of this AGREEMENT.

RECEIVED  
San Jose City Clerk  
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**SECTION 3.      SCHEDULE OF PERFORMANCE.**

The services of CONSULTANT are to be completed according to the schedule set out in EXHIBIT C, entitled "SCHEDULE OF PERFORMANCE", which is attached hereto and incorporated herein. Time is of the essence in this AGREEMENT.

**SECTION 4.      COMPENSATION.**

The compensation to be paid to CONSULTANT, including both payment for professional services and reimbursable expenses, shall not exceed **SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00)**. The rate and schedule of payment is set out in EXHIBIT D, entitled "COMPENSATION," which is attached hereto and incorporated herein.

**SECTION 5.      METHOD OF PAYMENT.**

Each month, CONSULTANT shall furnish to CITY a statement of the work performed for compensation during the preceding month. Such statement shall also include a detailed record of the month's actual reimbursable expenditures.

**SECTION 6.      INDEPENDENT CONTRACTOR.**

It is understood and agreed that CONSULTANT, in the performance of the work and services agreed to be performed by CONSULTANT, shall act as and be an independent contractor and not an agent or employee of CITY; and as an independent contractor, CONSULTANT shall obtain no rights to retirement benefits or other benefits which accrue to CITY's employees, and CONSULTANT hereby expressly waives any claim it may have to any such rights.

**SECTION 7.      ASSIGNABILITY.**

The parties agree that the expertise and experience of CONSULTANT are material considerations for this AGREEMENT. CONSULTANT shall not assign or transfer any interest in this AGREEMENT nor the performance of any of CONSULTANT's obligations hereunder,

without the prior written consent of CITY, and any attempt by CONSULTANT to so assign this AGREEMENT or any rights, duties or obligations arising hereunder shall be void and of no effect.

**SECTION 8. SUBCONSULTANT.**

- A. Notwithstanding SECTION 7 above, CONSULTANT may use Ed Henning and Associates as a subconsultant(s) in performing work under this AGREEMENT.
- B. CONSULTANT shall be responsible for directing the work of subconsultant(s) and for any compensation due to subconsultant(s). CITY assumes no responsibility whatsoever concerning such compensation.
- C. CONSULTANT shall change or add subconsultants only with the written approval of CITY's Director of Public Works ("Director").

**SECTION 9. INDEMNIFICATION.**

CONSULTANT shall defend, indemnify and hold harmless CITY, its officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from work performed under this AGREEMENT due to the willful or negligent acts (active or passive) or omissions by CONSULTANT's officers, employees or agents. The acceptance of said services and duties by CITY shall not operate as a waiver of such right of indemnification.

**SECTION 10. INSURANCE REQUIREMENTS.**

CONSULTANT agrees to have and maintain the policies set forth in EXHIBIT E, entitled "INSURANCE," which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by the Director of Finance or the Director's authorized designee ("Risk Manager") of the City of San José as to form and content.

These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. CONSULTANT agrees to provide CITY with a copy of said policies, certificates and/or endorsements before work commences under this AGREEMENT.

**SECTION 11. NONDISCRIMINATION.**

CONSULTANT shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT.

**SECTION 12. TERMINATION.**

- A. CITY shall have the right to terminate this AGREEMENT, without cause, by giving not less than seven (7) days' written notice of termination.
- B. If CONSULTANT fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, CITY may terminate this AGREEMENT immediately upon written notice.
- C. CITY's Director or the Director's authorized designee is empowered to terminate this AGREEMENT on behalf of CITY.
- D. In the event of termination, CONSULTANT shall deliver to CITY copies of all reports, documents, and other work performed by CONSULTANT under this AGREEMENT, and upon receipt thereof, CITY shall pay CONSULTANT for services performed and reimbursable expenses incurred to the date of termination.

**SECTION 13.     GOVERNING LAW.**

CITY and CONSULTANT agree that the law governing this AGREEMENT shall be that of the State of California.

**SECTION 14.     COMPLIANCE WITH LAWS.**

CONSULTANT shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

**SECTION 15.     CONFIDENTIAL INFORMATION.**

All data, documents, discussions or other information developed or received by or for CONSULTANT in performance of this AGREEMENT are confidential and not to be disclosed to any person except as authorized by CITY, or as required by law.

**SECTION 16.     OWNERSHIP OF MATERIALS.**

All reports, documents or other materials developed or discovered by CONSULTANT or any other person engaged directly or indirectly by CONSULTANT to perform the services required hereunder shall be and remain the property of CITY without restriction or limitation upon their use.

**SECTION 17.     WAIVER.**

CONSULTANT agrees that waiver by CITY of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of the performance of any work or services by CONSULTANT shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

**SECTION 18.     CONSULTANT'S BOOKS AND RECORDS.**

- A. CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to CONSULTANT pursuant to this AGREEMENT.
- B. CONSULTANT shall maintain all documents and records which demonstrate performance under this AGREEMENT for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this AGREEMENT.
- C. Any records or documents required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit at no cost to CITY, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at CONSULTANT's address indicated for receipt of notices in this AGREEMENT.
- A. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONSULTANT's business, CITY may, by written request by any of the above-named officers, require that custody of the records be given to CITY and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by CONSULTANT, CONSULTANT's representatives, or CONSULTANT's successor-in-interest.

**SECTION 19.     CONFLICT OF INTEREST.**

A.     CONSULTANT shall avoid all conflict of interest or appearance of conflict of interest in performance of this AGREEMENT. Without limiting the generality of the foregoing, CONSULTANT agrees that CITY, through CITY's Director or the Director's authorized designees, is charged with the management of this AGREEMENT and that no other person, including without limitation, the owners of the properties listed in EXHIBIT B, has the authority to direct or instruct CONSULTANT regarding CONSULTANT's performance of services under this AGREEMENT.

B.     CONSULTANT warrants that neither CONSULTANT nor CONSULTANT's personnel ("CONSULTANT's Personnel") assigned to perform services under this AGREEMENT has any interest, present or contemplated, in the property or properties affected by this AGREEMENT or in any property within a radius of 2500 feet of the subject property or properties and that neither CONSULTANT nor CONSULTANT's Personnel has derived no income from any owner of the subject property or properties.

**SECTION 20.     GIFTS.**

- A.     CONSULTANT is familiar with CITY's prohibition against the acceptance of any gift by a CITY officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code.
- B.     CONSULTANT agrees not to offer any CITY officer or designated employee any gift prohibited by said Chapter.
- C.     The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this AGREEMENT by CONSULTANT. In addition to any other remedies CITY

may have in law or equity, CITY may terminate this AGREEMENT for such breach as provided in SECTION 11 of this AGREEMENT.

**SECTION 21. DISQUALIFICATION OF FORMER EMPLOYEES.**

CONSULTANT is familiar with the provisions relating to the disqualification of former officers and employees of CITY in matters which are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San José Municipal Code ("Revolving Door Ordinance"). CONSULTANT shall not utilize either directly or indirectly any officer, employee, or agent of CONSULTANT to perform services under this AGREEMENT, if in the performance of such services, the officer, employee, or agent would be in violation of the Revolving Door Ordinance.

**SECTION 22. SPECIAL PROVISIONS.**

Special provisions, if any, to this AGREEMENT are specified in EXHIBIT F, entitled, "SPECIAL PROVISIONS", which is attached hereto and incorporated herein.

**SECTION 23. NOTICES.**

All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To CITY:

Katy Allen  
Director of Public Works  
City of San José  
200 East Santa Clara Street, 3<sup>rd</sup> Floor Tower  
San José, Ca 95113  
Attention: Thomas Borden  
408-535-6831 Fax: 408-292-6054



To CONSULTANT:

Marco Li Mandri, President  
New City America, Inc.  
2130 Columbia Street  
San Diego, CA 92101  
619-233-5009 Fax: 619-239-7105  
mail@newcityamerica.com

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

**SECTION 24. VENUE.**

In the event that suit shall be brought by either party to this contract, the parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

**SECTION 25. PRIOR AGREEMENTS AND AMENDMENTS.**

This AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may be modified only by a written amendment duly executed by the parties to this AGREEMENT.

**SECTION 26. SEVERABILITY.**

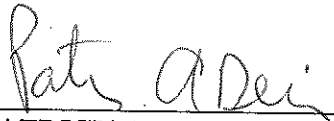
If any term, covenant, condition or provision of this AGREEMENT, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this AGREEMENT, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

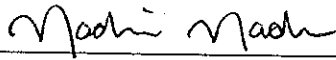
WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

"CITY"

APPROVED AS TO FORM:

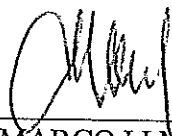
CITY OF SAN JOSE, a municipal corporation

  
\_\_\_\_\_  
PATRICIA DEIGNAN  
Chief Deputy City Attorney

By   
\_\_\_\_\_  
Nadine Nader  
Assistant to the City Manager

"CONSULTANT"

NEW CITY AMERICA, INC., a California  
corporation

By   
\_\_\_\_\_  
MARCO LI MANDRI  
President

**EXHIBIT A**

**RECITALS**

WHEREAS, the CITY OF SAN JOSE desires to obtain consultant services related to the formation of a special district to be known as Willow Glen Assessment District; and

WHEREAS, NEW CITY AMERICA, INC. has the necessary professional expertise and skill to perform such services;

NOW, THEREFORE, the purpose of this AGREEMENT is to retain NEW CITY AMERICA, INC. as CONSULTANT to CITY to perform those services specified in SECTION 1 of this AGREEMENT.

**EXHIBIT B**  
**SCOPE OF SERVICES**

CONSULTANT shall assist CITY's Department of Public Works staff with the tasks customarily performed by the "special district formation consultant" in connection with the formation of a special district in the Willow Glen area (alternatively referred to as either "District" or the "Project") pursuant to standard acceptable industry practices for the development of benefit assessment districts and in accordance with state law and municipal codes as applicable. All services furnished by the CONSULTANT under this AGREEMENT shall be of the currently prevailing professional standards and quality which prevail among consulting professionals of similar knowledge and skills engaged in related work throughout California under the same or similar circumstances.

CONSULTANT's services shall generally include, but will not be limited to: establish a working relationship with the Willow Glen Business Association, and develop with the Business Association a steering committee to work with CITY staff throughout the formation of the District; coordinate public outreach events including a survey of potential District property owners, and attend District-related meetings; if directed by Council, assist CITY staff in the adoption of a new local ordinance enabling the formation of "Community Benefit Districts"; draft and finalize a management plan for the proposed District; coordinate and record written petition results; prepare and mail City Council reports, meeting notices and election materials; and assist CITY staff with the preparation of the first tax roll. The specific tasks to be completed are as follows:

1. Work with Willow Glen Business Association in establishing a new Willow Glen Steering Committee ("Steering Committee") and develop procedures to respond to the issues relating to the formation of the District.

2. Work with CITY staff and the Steering Committee to determine initial District boundaries and proposed services and scope of the feasibility study.
3. Gather and verify benefiting assessor parcel numbers, property ownership, and situs and mailing addresses within the proposed District boundaries.
4. Conduct a mailed questionnaire to property owners ascertaining level of support for a special benefits district and priority of services within the District.
5. Prepare a written report on the survey results, plot survey results on the draft District boundary map, and propose a list of services for CITY staff and Steering Committee review and comment.
6. Meet with CITY staff and the Steering Committee to provide outcome of feasibility study and determine consensus on forming the District.
7. Prepare a draft boundary map to show the proposed District parcels, a description of improvements or services, the annual costs, and the Rate and Method of Apportionment ("R&M") of assessment.
8. Develop the Management Plan, have the plan certified by an assessment engineer, and approved by CITY.
9. Assist CITY staff in drafting a proposed local ordinance enabling the formation of a "Community Benefit District" that will meet the needs of the proposed District.
10. Conduct a written petition drive and extensive community outreach to all the prospective District property owners. Prepare, distribute, and record the outcome of written petitions to all benefiting property owners within the proposed District.
11. Assist CITY staff with the preparation for and attendance at District CITY Council events including ballot preparation and materials for mailing.
12. Assist CITY staff with the preparation of the first tax roll.

**Task 1 – Establish a Community Steering Committee**

CONSULTANT shall work with Willow Glen Business Association in establishing a new Steering Committee comprised of stakeholders from all land use types within the proposed District boundary to discuss potential boundaries and services and activities to be funded by the District and how to respond to issues regarding the formation of the District.

Throughout the course of the Project, CONSULTANT shall meet with CITY staff and other Project team members as requested by CITY in order to collect and disseminate Project information. It is anticipated that there will be approximately six (6) team meetings. The Project Team may consist of CONSULTANT, the Steering Committee, CITY staff and any other participants CITY and CONSULTANT deem necessary.

**Task 2 – Collect Pertinent Data**

CONSULTANT shall collect data from CITY staff, and Santa Clara County property records that is pertinent to the potential qualified electors of the District.

**Task 3 – Property Owner Questionnaire**

CONSULTANT shall conduct a mailed questionnaire to property owners within the proposed district boundary ascertaining the level of support for a special benefits district and priority of services within the proposed District, prepare a written report on the results of the survey, and provide the results to CITY and the Steering Committee.

**Task 4 – Determine Outcome of the Feasibility Study**

CONSULTANT shall assist CITY in the analysis of community feedback to determine next steps based on the data collected from personal interviews and the survey of the community needs. CONSULTANT shall meet with the Steering Committee and CITY to solidify next steps and formulate a schedule for the formation of the proposed District.

**Task 5 – Prepare and Record the Boundary Map**

CONSULTANT shall prepare a proposed boundary map that identifies the parcels of property proposed for inclusion in the District. Have map approved by CITY's Department of Public Works. Prior to the adoption of the Resolution of Intention, file the map with the City Clerk. Record the proposed boundary map at the County Recorder's office after City Council adoption of the Resolution of Intention.

**Task 6 – Prepare the Description of Improvements and Activities**

CONSULTANT shall, with information provided by CITY's Department of Public Works, prepare the description of the improvements and activities proposed to be financed by the imposition of assessments against benefiting properties within the District.

**Task 7 – Prepare the District Budget**

CONSULTANT shall, with information provided by CITY's Department of Public Works, prepare a line item budget for each item proposed to be financed by the imposition of assessments against benefiting properties within the District.

**Task 8 – Prepare the Rate and Method of Apportionment of Assessment**

CONSULTANT shall prepare the Rate and Method of Apportionment (R&M) for parcels within the District. Preliminary work on the R&M shall include analysis of various defensible formulas for apportioning assessments to properties based on, but not limited to, proportionate acreage (gross or net), potential developable building square footage, and development status (e.g. should vacant parcels be taxed less than developed parcels) as well as other variables that CONSULTANT believes will ensure that the District Management Plan will be consistent with state constitutional requirements on property assessment districts.

**Task 9 – Preparation of the Management Plan**

CONSULTANT shall prepare a draft management plan, distribute the draft to CITY and the Steering Committee for review and incorporate comments. CONSULTANT shall have the plan certified by an assessment engineer and return final draft to the Director for approval by Council.

**Task 10 – Develop Community Benefit District Ordinance**

CONSULTANT shall submit to CITY staff for review and approval a draft local ordinance enabling the formation of a “Community Benefit District” that will meet the needs of the proposed District. CONSULTANT shall assist CITY staff in the CITY Council process of adopting the ordinance and amending the CITY Municipal Code.

**Task 11 – Preparation and Distribution of Written Petitions**

CONSULTANT shall submit a draft written petition to CITY for review and approval. Finalize and distribute the petition, and record the outcome of the petition drive. After the petitions have been distributed, CONSULTANT shall conduct public outreach to educate and inform the District business and property owners. CONSULTANT shall review the outcome of the petition drive with the Steering Committee and CITY.

**Task 12 – Prepare Notices of Public Meetings, Hearing, and Election**

CONSULTANT shall prepare and submit to CITY staff for approval, notices for all public meetings, the hearing, and the election to each eligible assessed property owner within the District.

**Task 13 – Prepare Election Materials**

CONSULTANT shall prepare and submit to CITY staff for approval election materials. The election materials will include ballots and election materials together with all supplies



and instructions necessary for the use and return of the ballot. The ballot shall have imprinted on it:

- Verified current name of the property owner,
- Verified current address of the property owner,
- Declaration stating that the voter is the owner of record or authorized representative of the property owner,
- The printed name and signature of the property owner,
- Date of signing and place of execution of the declaration described above,
- Notice that the envelope contains an official ballot and is to be opened only by the canvassing board or its designee.

**Task 14 – Assist in the Preparation for and Attend District Council Meetings**

CONSULTANT shall assist CITY staff with the preparation of Council related documents and attend CITY Council meetings with CITY staff and answer questions of the Council regarding the work performed by CONSULTANT in conjunction with the Project.

**Task 15 – Assist in the Preparation for the First Tax Roll Following the Approval of the District**

CONSULTANT shall draft the Notice of Assessment for CITY staff review and approval and assist CITY staff with the preparation for the first tax roll following the approval of the District.

**EXHIBIT C**  
**SCHEDULE OF PERFORMANCE**

CONSULTANT commenced work on July 1, 2007, and shall proceed in accordance with the time frames set forth below unless the time for performance is extended in writing by CITY in advance of the due date. For Tasks 5 through 15, a general time frame is set forth below, the actual completion dates for these Tasks will follow a formation schedule which will be developed during the feasibility study phase of the proposed District. The estimated time for completion is February 28, 2009.

<b><u>TASK</u></b>	<b><u>COMPLETION DATE</u></b>
Task 1	October - November
Task 2	October - November
Task 3	October - December
Task 4	December
Task 5	December - February
Task 6	December - February
Task 7	December - February
Task 8	December - February
Task 9	December - February
Task 10	July - February
Task 11	February - March
Task 12	April - June
Task 13	April - June
Task 14	April - June
Task 15	August

**EXHIBIT D**  
**COMPENSATION**

A. The maximum amount of compensation to be paid to CONSULTANT under this AGREEMENT, including both payment for professional services and reimbursable expenses, shall not exceed SIXTY-FIVE THOUSAND DOLLARS (\$65,000.00). Any hours worked for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to CITY. In the event that CONSULTANT costs exceed the CITY maximum allowcation for this contract, the CONSULTANT may be reimbursed for up to TEN THOUSAND DOLLARS (\$10,000) in additional professional costs and direct reimburseable expenses from revenues from the first installment of property assesements to be paid by the CITY contingent upon collection of such assessment, and prior to transfer of the balance of the collected assessment to the Willow Glen CBD Management Corporation.

B. CITY agrees to compensate CONSULTANT at the following hourly rates for professional services performed in accordance with the terms and conditions of SECTION 5 of this AGREEMENT.

Project Manager	\$235*	Hour
Assistant Project Manager	\$90*	Hour
Database, Mapping, and Survey Work	\$55*	Hour
Design and Research	\$60*	Hour
Accounting	\$60*	Hour
Administration	\$60*	Hour
Graphic Design Support	\$35*	Hour
Assessment Engineer	\$2,000	Lump Sum

\* Hourly rates are subject to annual adjustment commencing January 1, 2008. The annual adjustment shall not exceed 5%.

C. Reimbursable expenses shall include: fees for obtaining County Assessor Maps, County Recording Fees, blueprinting, reproduction, communication, printing, photocopying, travel, facsimile, courier, sub-contractors, and other out of pocket expenses. Maximum amount of reimbursable expenses is \$10,000. Any expenses incurred greater than the maximum shall be at CONSULTANT's expense, unless otherwise authorized in writing by CITY.

D. Compensation shall be broken down by Tasks described in EXHIBIT B SCOPE OF SERVICES. CONSULTANT may request CITY to reallocate un-paid monies among Tasks. Upon written approval of CITY, CONSULTANT will be allowed to invoice for services up to the revised maximum compensation for that Task and to the extent that total compensation for Tasks 1 through 15 does not exceed SEVENTY-FIVE THOUSAND DOLLARS (\$75,000).

E. If CONSULTANT fails to submit the required deliverable items as specified in Exhibit B, CITY has the right to withhold payment until the deliverable items are submitted to CITY, and/or terminate this AGREEMENT in accordance with Section 12, "Termination."

F. CONSULTANT shall, during the term of this AGREEMENT, invoice CITY every month for services performed during the previous month under this AGREEMENT. The monthly invoice shall describe work completed under each Task, the number of hours and corresponding hourly-rates associated with each Task, reimbursable expenses incurred within each Task, and receipts of payment and cancelled checks for all reimbursable expenses. The first monthly invoice shall include separately all work done and expenses incurred from July 1, 2007, through and upto the execution of this AGREEMENT.

G. CITY agrees to remit payment on CONSULTANT's invoices within 60 days of receipt of invoice.

**EXHIBIT E**  
**INSURANCE**

CONSULTANT, at CONSULTANT's sole cost and expense, shall procure and maintain for the duration of this AGREEMENT insurance against claims for injuries to persons or damages to property, which may arise from, or in connection with, the performance of the services hereunder by CONSULTANT, its agents, representatives, employees or subcontractors.

**A. Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. The coverage described in Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001 including products and completed operations; and
2. The coverage described in Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 "any auto", or Code 2 "owned autos" and Endorsement CA 0025. Coverage shall also include Code 8 "hired autos" and Code 9 "nonowned autos"; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors & Omissions.

**B. Minimum Limits of Insurance**

CONSULTANT shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and
4. Professional Liability Errors & Omissions \$1,000,000 Aggregate Limit.

**C. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to, and approved by CITY's Risk Manager. At the option of CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, employees, agents and contractors; or CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the CITY's Risk Manager.

**D. Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
  - a. Insured. The City of San José, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, CONSULTANT; products and completed operations of CONSULTANT; premises owned, leased or used by CONSULTANT; and automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.
  - b. Contribution Not Required. CONSULTANT's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be excess of CONSULTANT's insurance and shall not contribute with it.
  - c. Provisions Regarding the Insured's Duties After Accident or Loss. Any failure to comply with reporting provisions of the policies by CONSULTANT shall not affect coverage provided CITY, its officers, employees, agents, or contractors.



- d. Coverage. Coverage shall state that CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. All Coverages

Each insurance policy required by this AGREEMENT shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to CITY's Risk Manager.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

F. Verification of Coverage

CONSULTANT shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the Risk Manager:

City of San Jose - Human Resources  
Risk Management  
200 East Santa Clara St., 2nd Floor - Wing  
San Jose, CA 95113-1905

G. **Subcontractors**

CONSULTANT shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

## **EXHIBIT F**

### **SPECIAL PROVISIONS**

#### **Retroactive Services.**

It is understood and agreed that CONSULTANT has provided services prior to the execution of this AGREEMENT in anticipation of its execution. If CITY accepts and approves the services provided by CONSULTANT prior to the date of this AGREEMENT, CITY agrees to compensate CONSULTANT for those services in accordance with the terms of this AGREEMENT. However, in no event shall CONSULTANT be compensated for work performed for CITY prior to July 1, 2007 or in excess of SEVENTY-FIVE THOUSAND DOLLARS \$75,000.